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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,004	01/04/2002	Ralph Weldy	0112480-010	7477
24573	7590	08/30/2004	EXAMINER	
BELL, BOYD & LLOYD, LLC PO BOX 1135 CHICAGO, IL 60690-1135			CORBIN, ARTHUR L	
		ART UNIT	PAPER NUMBER	
		1761		

DATE MAILED: 08/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)	
(101039,004)	WELDY	
Examiner	Group Art Unit	
ARTHUR L. CORBINE	(76)	

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

Responsive to communication(s) filed on 7-9-04

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- | | |
|--|--|
| <input checked="" type="checkbox"/> Claim(s) <u>1-15</u> | is/are pending in the application. |
| <input type="checkbox"/> Of the above claim(s) _____ | is/are withdrawn from consideration. |
| <input type="checkbox"/> Claim(s) _____ | is/are allowed. |
| <input checked="" type="checkbox"/> Claim(s) <u>1-15</u> | is/are rejected. |
| <input type="checkbox"/> Claim(s) _____ | is/are objected to. |
| <input type="checkbox"/> Claim(s) _____ | are subject to restriction or election requirement |

Application Papers

- The proposed drawing correction, filed on _____ is approved disapproved.
- The drawing(s) filed on _____ is/are objected to by the Examiner
- The specification is objected to by the Examiner.
- The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

All Some* None of the:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. _____.
- Copies of the certified copies of the priority documents have been received
in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- | | |
|--|---|
| <input type="checkbox"/> Information Disclosure Statement(s), PTO-1449, Paper No(s). _____ | <input type="checkbox"/> Interview Summary, PTO-413 |
| <input type="checkbox"/> Notice of Reference(s) Cited, PTO-892 | <input type="checkbox"/> Notice of Informal Patent Application, PTO-152 |
| <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review, PTO-948 | <input type="checkbox"/> Other _____ |

Office Action Summary

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

3. Claim 2 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no support in the original disclosure for chilling to "25⁰ F or less"

Correction is required.

4. Claims 5 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is no antecedent basis in claim 5 or in claim 12 for "the poultry" (line 3 of claims 5 and 12). Correction is required.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over The Good Cook literature article.

The article is described in paragraph No. 3, Paper No. 032404. It would have been obvious to store the chicken parts under chilled conditions before slicing since chilling is a conventional storage preservation means for poultry. Finding the optimum time and temperature parameters (claims 2-4, 5, 7 and 12) would require nothing more than routine experimentation by one reasonably skilled in this art.

7. Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strong.

Applicant is referred to the reasoning set forth in paragraph No. 4, Paper No. 032404. Also, see the last sentence in paragraph No. 6 above.

8. Applicant's arguments filed July 9, 2004 have been fully considered but they are not persuasive. The one hour time period used for marinating the chicken in the literature article is clearly feasible on a commercial scale.

Further, applicant's contention, that chilling and marinating chicken pieces is not disclosed in Strong, is without merit. Strong (column 5, lines 1-5) discloses initially packing chilled chickens in ice and later marinating chicken pieces (column 5, lines 20 and 21).

9. The switch from 35 USC 102 to 35 USC 103 in the rejection of claim 1 is not a new ground of rejection. See In re Jacobson, 160 USPQ 795 and Ex parte Hill, 169 USPQ 437).

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication from the examiner should be directed to Arthur L. Corbin whose telephone number is (571) 272-1399. The examiner can generally be reached on Monday--Friday from 10:30 to 8:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A.L. Corbin/dh
August 27, 2004



ARTHUR L. CORBIN
PRIMARY EXAMINER

8-27-04